

WEBER GALLAGHER SIMPSON
STAPLETON FIRES & NEWBY LLP
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**Attorneys for Defendants,
Santilli & Thompson, LLC
and Gerald L. Santilli**

Hillary Lebowitz	:	UNITED STATES DISTRICT COURT
	:	FOR THE EASTERN DISTRICT OF
vs.	:	PENNSYLVANIA
	:	
Tacony Academy Charter School,	:	Civil Action No. 10-233
Santilli & Thompson, LLC, Gerald L.	:	JURY TRIAL DEMANDED
Santilli & Stacy L. Cruise	:	

ORDER

AND NOW, this day of , 2010, upon consideration of Defendants' Santilli & Thompson, LLC and Gerald L. Santilli's Motion to Dismiss Plaintiff's Complaint, Plaintiff's Response Brief, and Moving Defendants' Reply, it is hereby ORDERED AND DECREED that the Motion is GRANTED and Plaintiff's Complaint against Santilli & Thompson, LLC and Gerald L. Santilli is DISMISSED with prejudice.

BY THE COURT:

Honorable Gene E. K. Pratter

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**REPLY BRIEF IN SUPPORT OF DEFENDANTS SANTILLI AND THOMPSON LLC
AND GERALD L. SANTILLI'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

A. INTRODUCTION

This cause of action arises from the termination of employment of Plaintiff, Hillary Lebowitz, as a social worker at Tacony Academy Charter School ("TACS") in October 2009. On or about March 22, 2010, Defendants Santilli & Thompson LLC and Gerald Thompson ("Moving Defendants") filed a Motion to Dismiss Plaintiff's Complaint. On or about April 5, 2010 Plaintiff filed her Response thereto. Moving Defendants herein submit this Reply to address the argument asserted by the Plaintiff in her Response that the alleged reports she submitted to her employer were protected under the First Amendment as speech of a private citizen.

B. REPLY ARGUMENT

Moving Defendants maintain that under the applicable caselaw that the Plaintiff was not engaged in protected speech when she made the alleged reports pursuant to the Child Protective

Services Law (“CPSL”) or the IDEA because she was acting in the scope of her public employment at the times alleged. Plaintiff claims that as an employee of TACS, it was her job to make reports concerning the 30-day change of place notices and that she was a “mandated reporter” pursuant to the CPSL of any suspected child abuse. Yet, Plaintiff also argues in her Response that she was not acting in the scope of her public employment when she made the alleged report of a CPSL violation, but as a private citizen who made an observation while walking down a hallway in TACS.

In making this disingenuous argument, it is clear from Plaintiff’s Complaint that she allegedly observed the conduct of Mr. Randall in the course of her employment while at work in the hallway of TACS. Similarly, the allegation regarding the change of place notices occurred in the course of Plaintiff’s employment as a social worker at TACS. In fact, in order to prevail on her CPSL and Whistleblower claims, Plaintiff seeks protection for reporting this conduct as a public employee. This Complaint is devoid of any factual allegations that she was speaking as a private citizen.

1. Plaintiff’s Reliance Upon Reilly is Wholly Misplaced Because That Case Is Limited to Courtroom Testimony.

Plaintiff mistakenly relies upon Reilly v. City of Atlantic City, 532 F.3d 216 (3d Cir. 2008), in furtherance of her position that she was acting as a private citizen and a mandated reporter. 532 F.3d 216 (3d Cir. 2008). The facts which provided the basis for the holding in Reilly are entirely distinguishable from the matter currently before this Court. The Third Circuit in Reilly was reviewing a District Court decision concerning a police officer who had filed a complaint alleging First Amendment retaliation due to the sworn testimony that he gave in court as a witness for the prosecution at a trial involving another officer. In that case, the Third Circuit

held that the plaintiff's "truthful testimony in Court constituted citizen speech" and therefore his claim "was not barred by the 'official duties doctrine' stated in Garcetti." Id. at 231.

In reaching this decision, the Court reviewed Garcetti v. Caballos, 547 U.S. 410 (2006). The Reilly Court noted that the "Garcetti decision 'narrowed the Court's jurisprudence in the area of employee speech' by further restricting the speech activity that is protected." Id. at 216, 228. The Reilly court distinguished its holding from that of Garcetti on the basis that the plaintiff gave sworn testimony at trial which is a "basic obligation that every citizen owes his Government." Id. at 231.

Here, there is no allegation that the Plaintiff gave sworn testimony in court. She claims that she made internal complaints at work only. Therefore, the holding in Reilly is inapplicable to the instant case.

C. CONCLUSION

For the foregoing reasons, as well as the reasons set forth in Moving Defendant original Motion to Dismiss which is incorporated herein by reference, Defendants, Santilli & Thompson, LLC and Gerald L. Santilli, respectfully request that this Honorable Court grant their Motion to Dismiss and enter the attached proposed order.

**WEBER GALLAGHER SIMPSON
STAPLETON FIRES & NEWBY, LLP**

By: /s/ Tracy A. Walsh
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Date: 4/12/10

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CERTIFICATE OF SERVICE

It is hereby certified that the within Reply Brief In Support of Moving Defendants Motion to Dismiss was filed and served via electronic filing means upon the below listed counsel of record on April 12, 2010:

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